

REDACTED – FOR PUBLIC INSPECTION

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May 7, 2012

Monica S. Desai
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VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

FILED/ACCEPTED

MAY - 7 2012

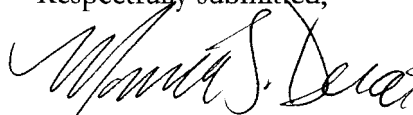
**Federal Communications Commission
Office of the Secretary**

**Re: REDACTED -- FOR PUBLIC INSPECTION
Applications of Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and
Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses,
WT Docket No. 12-4**

Dear Ms. Dortch:

On behalf of the Communications Workers of America ("CWA") and the International Brotherhood of Electrical Workers ("IBEW"), enclosed please find two copies of the Public Inspection version in redacted form of CWA's and IBEW's Ex Parte filing in the above-referenced docket. A Highly Confidential version of the Ex Parte filing is being filed under separate cover.

Respectfully submitted,



Monica S. Desai
Partner

Counsel for CWA-IBEW

Enclosures

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ORIGINAL

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**Federal Communications Commission
Office of the Secretary**

Re: REDACTED – FOR PUBLIC INSPECTION

Application of Cellco Partnership d/b/a/ Verizon Wireless and SpectrumCo, LLC, for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

On May 3, 2012, Debbie Goldman of Communications Workers of America (“CWA”), along with Monica Desai and Brendan Coffman, counsel to CWA, and Randy Barber, consultant to CWA, met with Jim Bird, Joel Rabinovitz and Virginia Metallo of the Commission’s Office of General Counsel; Rick Kaplan, Susan Singer, Paul Murray and Joel Taubenblatt of the Wireless Telecommunications Bureau; Lisa Gelb and Christopher Sova of the Wireline Competition Bureau; and Jessica Campbell of the Media Bureau. During the meeting, CWA highlighted that the documents they have reviewed thus far reflect that the proposed transaction has the potential to undercut a critical underpinning of the 1996 Telecom Act and a central policy goal of the FCC – cross-platform competition. As CWA explained, because the commercial agreements are inextricably intertwined with the spectrum transfer, it is artificial to separate them for public interest review purposes, and artificial to consider the impact of each on separate tracks. CWA urged that if the Commission were to move forward with approval, it should not do so without the following conditions, which would support the Telecom Act’s promise of cross-platform competition, and its related benefits – more jobs, more network investment, and more robust choices for video, wireless, voice and broadband services:

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1. Prohibit Applicants from cross-marketing their services within the Verizon footprint;
2. Require Verizon to continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and require that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance; and
3. Require Verizon Wireless and the Cable Companies to make the services each of them provides each other and the intellectual property developed under the Agreements to be available on a nonexclusive basis, and to make such services and intellectual property available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.

CWA's discussion with staff is described in more detail below.

I. The Transaction Significantly Undercuts a Critical Goal of the 1996 Telecommunications Act and the FCC: Cross-Platform Competition

CWA explained that the proposed Transaction would significantly undercut a central promise of the 1996 Telecommunications Act - cross-platform competition. Cross-platform competition drives industry investment, innovation, job creation and lower prices for consumers in video and wired broadband markets. The proposed Transaction, which involves a collaboration among the nation's largest wireless provider (which is a subsidiary of Verizon Communications) and the nation's largest cable companies, will turn former competitors into partners. CWA explained its belief that the combined companies, which will develop an integrated wired/wireless network delivery platform, will have the market power to dominate video, broadband, wireless, voice network platforms. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] Any competitor that is not part of this club will not be able to compete, leaving the powerful Verizon Wireless/cable company combination with the market power to set

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prices, service levels, innovation and employment standards. It also will mean an end to FiOS and cable competition, just as FiOS is starting to become profitable.

II. It is Imperative That the FCC Review the Commercial Agreements Directly in Connection With the Spectrum Transfer. They Are Inextricably Intertwined, and It Is Artificial to Separate Them For Public Interest Review Purposes.

CWA explained that the [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

For Comcast and Verizon Wireless, the incentive for the transaction is clear. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

² [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

³ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

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[REDACTED]

[REDACTED]

[END HIGHLY
CONFIDENTIAL INFORMATION] It is important to note: the transaction in question today constitutes the totality of these agreements. They did not occur, nor can they be considered, in isolation.

Contentions that the sale of spectrum by SpectrumCo is independent from the remainder of this Transaction are misguided and wrong. Comcast would not have sold this spectrum if it was not guaranteed a way to retain access to it. [BEGIN HIGHLY CONFIDENTIAL
INFORMATION]

[REDACTED]

⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED]

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[REDACTED]
[END HIGHLY CONFIDENTIAL INFORMATION]

III. Competitive Harms Related to the Proposed Transaction

CWA explained that the proposed Transaction goes beyond a simple agreement to collaborate or even to innovate. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END
HIGHLY CONFIDENTIAL INFORMATION] CWA discussed the harms in two categories: (1) the immediate harm through price-fixing, market allocation, joint marketing agreements, and agreements not to compete; and (2) the long-term harm of foreclosing an entire industry from the technology developed by JOE.

(1) Immediate Harm.

CWA described the immediate harms arising from the proposed Transaction, and in particular, the immediate and significant elimination of [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END HIGHLY
CONFIDENTIAL INFORMATION]

⁶ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END
HIGHLY CONFIDENTIAL INFORMATION]

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[REDACTED]

[REDACTED]

[REDACTED]

⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[END HIGHLY CONFIDENTIAL INFORMATION]

⁸ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL
INFORMATION]

⁹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[END HIGHLY CONFIDENTIAL INFORMATION]

¹⁰ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[END HIGHLY CONFIDENTIAL INFORMATION]

¹¹ *Id.*

¹² [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

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[REDACTED] [END

HIGHLY CONFIDENTIAL INFORMATION]

(2) Future Harm by Limiting Competitors' Access to JOE's Intellectual Property.

Several provisions of the JOE would lead to future harm by limiting competitors' access to the Intellectual Property developed by Members of the JOE. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED]

[REDACTED]

¹³ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

¹⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END
HIGHLY CONFIDENTIAL INFORMATION]

¹⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

¹⁶ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END HIGHLY CONFIDENTIAL
INFORMATION]

¹⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

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¹⁸ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION]

¹⁹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END
HIGHLY CONFIDENTIAL INFORMATION]

²⁰ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION]

²¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
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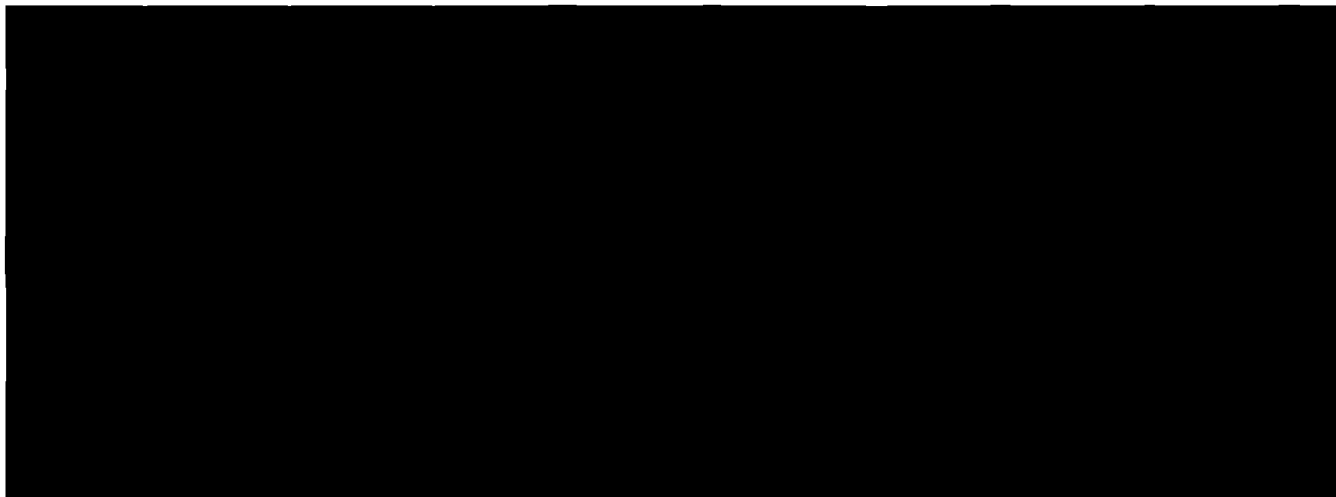
²² For a general description of RAND and intellectual property rights, *see* U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition (2007), at 33, *available at* <http://www.usdoj.gov/atr/public/hearings/ip/222655.pdf>.

²³ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY
CONFIDENTIAL INFORMATION]

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[END HIGHLY CONFIDENTIAL INFORMATION] Given all of these arrangements, CWA noted that the JOE is equivalent to a cartel authorized to develop new technology. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]



²⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

²⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED],
[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

²⁶ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[END HIGHLY CONFIDENTIAL INFORMATION]

²⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

²⁸ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY
CONFIDENTIAL INFORMATION]

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[REDACTED] [END HIGHLY CONFIDENTIAL
INFORMATION]

IV. The Transaction Will Reduce Video Competition, and Negatively Impact Broadband Deployment.

In addition, CWA described how the Transaction would put an end to FiOS' competition with cable companies just as FiOS is turning profitable. CWA emphasized that the Commission's National Broadband Plan set a goal of reaching 100 million households with broadband at 50 Mbps download/20 Mbps upload by 2015²⁹. The Commission is far from achieving that goal. The states with the fastest speeds are those where FiOS and cable companies compete head to head.³⁰ The proposed Transaction will eliminate incentives for FiOS competition, moving the United States even farther from that goal at a time when the country still trails the world and is ranked 32 in terms of broadband speeds.

CWA further emphasized that in a rational economic environment, absent the transaction, Verizon would be incented to continue FiOS deployment given its recent strong financial numbers.³¹ There is considerable evidence of FiOS' profitability. According to Verizon's First Quarter 2012 earnings, FiOS represents 63% of consumer revenues; 5 million internet subscribers (36% penetration); 4.4 million video subscribers (32% penetration).³²

²⁹ *Connecting America: The National Broadband Plan*, Chapter 2, p. 25, <http://download.broadband.gov/plan/national-broadband-plan-chapter-2-goals-for-high-performance-america.pdf>.

³⁰ Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers in WT Docket No. 12-4 at 8 (filed Feb. 21, 2012) ("CWA-IBEW Comments").

³¹ Reply Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers in WT Docket No. 12-4 at 6, 8 (filed March 26, 2012) ("CWA-IBEW Reply Comments").

³² Verizon Communications, First Quarter 2012 earnings release, (Apr. 19, 2012); http://www22.verizon.com/investor/news_verizon_reports_doubledigit_earnings_growth_and_increased_operating_cash_flow_in_firstquarter_2012_0.htm, last visited on May 5, 2012.

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Meanwhile, Fourth Quarter 2011 earnings show that FiOS grew 18.2%.³³ For the same period, FiOS also contributed to a 20% growth in triple play of voice, video, Internet services.³⁴ CWA rejected Verizon's statement that they never intended to go beyond 70 percent footprint build, noting that such a statement did not make sense in light of the recent financial performance of FiOS. CWA also noted that companies change "cap ex" plans as market and competitive realities change.

CWA reminded the Commission that Verizon's executives, Chief Financial Officer Francis Shammo and Verizon President and Chief Executive Officer Lowell McAdam, also have referenced "filling in" the FiOS build.³⁵ Mr. Shammo, recognizing the solid financial gains of FiOS, noted that "[i]n FiOS, we continued to steadily increase penetration on all [sic] all our markets. By further penetrating existing markets, we will enhance our capital and operating efficiency and improve overall investment returns."³⁶ As Mr. McAdam acknowledged less than a week after the Transaction was announced, "... if I look back 18 to 24 months ago we saw what the promise of LTE was and we looked at our FiOS asset. We said, wow, finally you are going to

³³ Verizon Communications, Fourth Quarter 2011 earnings release (Jan. 24, 2012); [http://www22.verizon.com/investor/news_verizon_reports_record_revenue_growth_in_4q_fueled_by_strong_demand_for_wireless_fios_and_strategic .htm](http://www22.verizon.com/investor/news_verizon_reports_record_revenue_growth_in_4q_fueled_by_strong_demand_for_wireless_fios_and_strategic.htm); last visited on May 5, 2012.

³⁴ Verizon Communications, Fourth Quarter 2011 earnings results presentation (slide 12), (Jan. 24, 2012); http://www22.verizon.com/idc/groups/public/documents/adacct/4q_earnings_release_slides.pdf; last visited on May 5, 2012.

³⁵ CWA-IBEW Reply Comments at 8-9 (noting that McAdam acknowledged less than a week after the Transaction was announced, "... if I look back 18 to 24 months ago we saw what the promise of LTE was and we looked at our FiOS asset. We said, wow, finally you are going to be able to do these quad-plays and have video move seamlessly between the desktop and the TV set and your tablet and your smartphone. The technology base will really support that. So we were well down the road in developing that for FiOS and then the opportunity came up to partner with Comcast . . .". Verizon Chairman, President and CEO Lowell McAdam, Transcript, UBS Median and Communications Conference at 2 (Dec. 7, 2011), http://www22.verizon.com/idc/groups/public/documents/adacct/ubs_vz_transcript.pdf (last visited on Mar. 20, 2012)

³⁶ CWA-IBEW Comments at 8-9 (citing Verizon Communications, Earnings Call Transcript, (Oct. 21, 2011), *available at* <http://seeking-alpha.com/article/301177-verizon-communications-management-discusses-q3-2011-results-earnings-call-transcript>.

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be able to do these quad-plays and have video move seamlessly between the desktop and the TV set and your tablet and your smartphone. The technology base will really support that. So we were well down the road in developing that for FiOS and then the opportunity came up to partner with Comcast”³⁷

However, the financial and competitive incentive to invest in and expand FiOS is eliminated by the joint marketing agreement. CWA noted that Verizon loses its incentive to aggressively advertise FiOS’ superiority over X-Finity once its wireless stores start to sell Comcast X-Finity. As a result, many people will be left on the wrong side of the digital divide – people of color and with low incomes. CWA showed the attached chart to staff, reflecting that cities currently without FiOS include Boston, Baltimore, Buffalo, Albany, Syracuse, Wilmington, Delaware, Erie, Pennsylvania, among others.³⁸ CWA noted that it is troubling that Verizon is not investing in its copper plant, thus stranding customers in the non-FiOS cities with no choice for broadband, and with the cable monopoly dominating the video market.

CWA noted that the implications for consumers are both dramatic and grave. A loss of FiOS competition would lead to higher cable prices. The Commission’s most recent cable price report found that prices were lower in communities where incumbent cable operators faced competition from a rival operator.³⁹ Absent FiOS, CWA told the Commission that fewer new jobs would be created because a competing network would be eliminated.

³⁷ Verizon Chairman, President and CEO Lowell McAdam, Transcript, UBS Median and Communications Conference at 2 (Dec. 7, 2011), http://www22.verizon.com/idc/groups/public/documents/adacct/ubs_vz_transcript.pdf (last visited on Mar. 20, 2012).

³⁸ See “Cities Without Verizon FiOS Compared to Surrounding Suburbs With FiOS,” Attachment A.

³⁹ *In re Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices, MM Dkt. No. 92-266, DA-12-377, at ¶ 5 (rel. Mar. 9, 2012). (“Chart 2 compares the expanded basic price in effective competition communities overall (\$54.77) to subgroups of communities, as of January 1, 2010. Prices on average were 1.5 percent lower (\$53.93) for incumbent cable operators in communities with a rival operator; 9.6 percent lower (\$49.51) for the rival operators . . .”).

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V. Conditions

For these reasons, CWA concluded the meeting by emphasizing why it is imperative that the Commission adopt the following conditions should it approve the Transaction:

1. Prohibit Applicants from cross-marketing their services within the Verizon footprint.
2. Require Verizon to continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and require that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance.

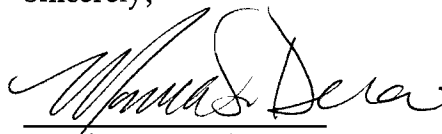
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3. Require Verizon Wireless and the Cable Companies to make the services each of them provides each other and the intellectual property developed under the Agreements to be available on a nonexclusive basis, and to make such services and intellectual property available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.

Sincerely,



Monica S. Desai
Partner

*Counsel for Communications Workers of
America*

cc: Adam Krinsky, Counsel to Celco Partnership d/b/a Verizon Wireless
J.G. Harrington, Counsel to Cox TMI Wireless, LLC
David Don, Counsel to SpectrumCo LLC
Michael Hammer, Counsel to Comcast Corporation
Robert Kidwell, Counsel to Bright House Networks, LLC
Matthew Brill, Counsel to Time Warner Cable Inc.
James Bird, FCC
Joel Rabinovitz, FCC
Rick Kaplan, FCC
Lisa Gelb, FCC
Christopher Sova, FCC
Virginia Metallo, FCC
Susan Singer, FCC
Paul Murray, FCC
Joel Tabenblatt, FCC
Jessica Campbell, FCC
Best Copy and Printing, Inc.

ATTACHMENT A

Cities without Verizon FiOS
Compared to Surrounding Suburbs with FiOS
Median Household Income, Poverty Rate, % Minority

	% Minority	Median Household Income	Poverty Rate
Buffalo - No Verizon FiOS	44.9%	\$29,285	28.8%
Buffalo Suburbs with Verizon FiOS	4.9%	\$56,925	8.2%
Baltimore - No Verizon FiOS	72%	\$38,346	25.6%
Baltimore Suburban Counties with FiOS	49.4%	\$95,386	7.7%
Boston - No Verizon FiOS	52.3%	\$49,893	23.3%
Boston Suburbs with Verizon FiOS	22.9%	\$82,816	8.3%
Albany - No Verizon FiOS	44.8%	\$39,158	25.3%
Albany Suburbs with FiOS	13.4%	\$70,540	5.4%
Syracuse - No Verizon FiOS	38.0%	\$30,891	31.1%
Syracuse Suburbs with Verizon FiOS	6.7%	\$52,961	7.0%

Source: Calculations based on U.S. Census, American Community Survey, 2006 through 2010